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October 2, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

Re: *Ex Parte*
CC Docket No. 03-167

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on October 1, 2003, Gavin McCarty, Chief Legal Officer, Globalcom, Inc. ("Globalcom"), and the undersigned, on behalf of Globalcom, had four separate meetings with the following persons concerning issues in the above-captioned proceeding: Meeting 1 - Commissioner Adelstein and Scott Bergmann; Meeting 2 - Jessica Rosenworcel, Office of Commissioner Copps; Meeting 3 - Matthew Brill, Office of Commissioner Abernathy; Meeting 4 - William Maher, Deena Shelter, Douglas Galbi, Robert Tanner, Jennifer McKee, and Pamela Arluk.[1] During the meetings, we discussed pricing issues associated with SBC-Illinois's and SBC-Wisconsin's 271 Application and presented the views set forth in the *ex parte* letter Globalcom filed in this docket on September 12, 2003.

In short, Globalcom explained that SBC-Illinois's proposal to assess a total of $932.06 in nonrecurring charges ("NRCs") for a DS1 EEL loop and transport combination, uncollocated, in Illinois is unreasonable under TELRIC. In addition, Globalcom explained that SBC-Wisconsin's total of $2,295.81 in NRCs for the same combination in Wisconsin is excessive when compared with the total NRCs SBC assesses for that combination in other SBC 271 approved states. In making this presentation, the attached rate comparisons were distributed and discussed.

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1 Mr. Branfman did not participate in Meeting 1.

Based on the discussions during the meetings, Globalcom emphasizes the following three points and urges that the FCC give them heightened consideration.

First, although the Commission recently granted SBC-Michigan's 271 Application, the total of the NRCs for the EEL combination at issue that SBC-Michigan assesses should by no means give the Commission any solace that SBC-Illinois's proposed total NRC of $932.06 for the same EEL combination is TELRIC compliant. Indeed, due to the limited timeframe that the Commission has to evaluate a 271 application, the Commission generally reviews applications on an exception basis and only focuses on the issues raised by the parties in the proceeding. With respect to SBC-Michigan's 271 Application, no party contended that SBC-Michigan's NRCs for the EEL combination at issue here were not TELRIC based. However, this silence - or lack of interest for that matter in these specific NRCs - does not mean *ipso facto* that the rates are TELRIC compliant. Quite the opposite, SBC Michigan's total NRC of $1,052.68 for the EEL combination at issue is more than double what would be paid in other SBC 271 approved states and is therefore nowhere near being within a range that a reasonable application of TELRIC principles would produce. Had a party been interested in these NRCs and objected to these charges while SBC-Michigan's 271 Application was being considered, the Commission would have come to this obvious conclusion. Regrettably, that did not happen.

Now the total of the Michigan NRCs for the EEL combination at issue are being used to support the erroneous notion that SBC-Illinois's proposed NRC of $932.06 is somehow TELRIC compliant - which it is not. The Commission should not adopt this faulty rationale. If it does, the Commission will be stating effectively that, in order for a CLEC to preserve the legitimacy of its arguments in a state in which it has a business interest, that CLEC must intervene in every prior 271 proceeding in which that UNE is similarly priced. Such a policy would be unsound and unreasonable and would not ensure that CLECs have a meaningful opportunity to compete, as section 271 of the Act requires. In this set of circumstances, the Commission should turn to the traditional SBC "benchmark states" it has deferred to in the past, *i.e.*, California and Texas, to determine if SBC-Illinois's proposed NRC of $932.06 is within a range that a reasonable application of TELRIC principles would produce. In this instance, Globalcom has demonstrated that it is not.

Second, the Commission should not give any weight to SBC's contention that its rates are TELRIC compliant because the combined recurring and nonrecurring charges paid over a 24 month period of time are comparable to the combined charges assessed in other 271 approved states. As the Commission recognizes, the heart of this argument is based on the notion that the state commissions in the other 271 approved states have specifically ordered SBC to recover nonrecurring costs associated with provisioning the EEL through recurring charges, as Commission Rule 51.507(e) permits. If these state commission have not permitted such a form of recovery, the TELRIC standard requires that recurring and nonrecurring charges be recovered based on how the costs are incurred.[2] SBC has the burden, however, to demonstrate that the

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[2] *Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, FCC 96-325, ¶ 745 (1996) ("*Local*

commissions in other states have permitted it to recover nonrecurring costs through recurring charges, which it has not done. Consequently, the Commission should not and cannot rely on SBC's mode of analysis and needs actual proof, especially when a CLEC contests the charges. The Commission has acknowledged its uncertainty in this regard and SBC-Illinois should provide the Commission with the background information needed for the Commission to make a sound decision. If SBC-Illinois fails to do so, its application should be denied. There is no solid evidence that justifies doing otherwise.

Finally, the Commission should not approve the SBC-Illinois 271 Application with these interim NRCs. The Commission released its original TELRIC rules on August 6, 1996. Over seven years have passed and permanent rates have still not been established. And its SBC-IL's own doing, as the strenuous advocate of the Illinois legislation that recently and abruptly ended the investigation that would have established such permanent rates. As a result of this and the Triennial Review implementation proceedings and the Commission's review of the TELRIC rules, it will be no earlier than two years from now before a proceeding is even initiated that does investigate SBC-IL's EEL NRCs.[3]

The Commission should therefore stand firm on its statements that "it will...become more reluctant to continue approving section 271 applications containing interim rates" on the grounds that "[i]t would not be sound policy for interim rates to become a substitute for completing these significant proceedings."[4] This policy is directly applicable here and is a sound basis to reject SBC-IL's 271 application.

Sincerely,

Eric J. Branfman
Philip J. Macres

Counsel for Globalcom, Inc.

Competition Order") (subsequent history omitted). Thus, SBC-Illinois could not and does not argue that its Illinois NRCs include costs that are incurred on a recurring basis.

[3] The FCC could, however, state in its denial order that it would reconsider the denial upon commencement of an ICC proceeding.

[4] *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 25650, Appendix C, ¶ 24 (2002) ("*Pacific Bell California Order*").

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Attachments

cc:
Chairman Powell, FCC
Commissioner Abernathy, FCC
Commissioner Adelstein, FCC
Commissioner Copps, FCC
Commissioner Martin, FCC
Scott Bergmann, FCC
Jessica Rosenworcel, FCC
Matthew Brill, FCC
William Maher, FCC
Deena Shelter, FCC
Douglas Galbi, FCC
Robert Tanner, FCC
Jennifer McKee, FCC
Pamela Arluk, FCC
Janice Myles, FCC
Kevin Walker, SBC (all via e-mail)

DIFFERENCE BETWEEN SBC'S DS1 UNCOLLOCATED EEL NRCS IN 271 APPROVED STATES AND SBC-IL'S PROPOSED RATE OF $932.06

SBC 271 Approved States	Total DS1 EEL NRCs[1]	Diff. from $932.06 SBC Proposed NRC
271 Benchmark States:		
California	$350.22	$581.84
Texas	$437.67	$494.39
Other 271 Approved States:		
Arkansas	$521.02	$411.04
Kansas	$521.02	$411.04
Missouri	$778.41	$153.65
Nevada	$344.75	$587.31
Oklahoma	$624.81	$307.25
Average[2]	$511.13	$420.93
Michigan	$1,052.68	($117.62)

[1] NRCs are taken from SBC's Reply Comments in Docket 03-167, Reply Affidavit of W. Karl Wardin, Attachment B, at 2 that were filed with the FCC on August 29, 2003.

[2] Average does not include Michigan.

DIFFERENCE BETWEEN SBC'S DS1 UNCOLLOCATED EEL NRCS IN 271 APPROVED STATES AND SBC-WI'S RATE OF $2,295.81

SBC 271 Approved States	**Total DS1 EEL NRCs**[3]	**Diff. from $2,295.81 SBC-WI NRCs**
<u>271 Benchmark States:</u>		
California	$350.22	$1,945.59
Texas	$437.67	$1,858.14
<u>Other 271 Approved States:</u>		
Arkansas	$521.02	$1,774.79
Kansas	$521.02	$1,774.79
Missouri	$778.41	$1,517.40
Nevada	$344.75	$1,951.06
Oklahoma	$624.81	$1,671.00
Average[4]	$511.13	$1,784.68
Michigan	$1,052.68	$1,243.13

[3] NRCs are taken from SBC's Reply Comments in Docket 03-167, Reply Affidavit of W. Karl Wardin, Attachment B, at 2 that were filed with the FCC on August 29, 2003.

[4] Average does not include Michigan.

DS1 NON-COLLOCATED EEL

State	Recurring						Non-Recurring					
		DS1 Interoffice Transport										
	4-Wire Digital Loop	Fixed/ Termination(s)	First Mile/ Per Mile	Cross Connect(s)	Entrance Facility	**Monthly Total**	4-Wire Digital Loop	DS1 Interoffice	Cross Connect(s)	Entrance Facility	Service Order/ Administrative	**NRC Total**
Arkansas	$ 64.78	$ 40.78	$ 0.32	$ 14.24	$ 75.81	$ 195.93	$ 68.40	$ 136.65	$ 147.76	$ 165.86	$ 2.35	$ 521.02
California	$ 89.68	$ 32.15	$ 1.87	N/A	$ 152.57	$ 276.27	$ 128.05	$ 105.17	NA	$ 114.54	$ 2.46	$ 350.22
Connecticut	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Illinois[1]	$ 73.46	$ 34.70	$ 1.88	$ 0.86	$ 73.46	$ 184.36	$ 518.09	$ 632.71	NA	$ 585.51	$ 549.54	$ 2,285.85
Indiana[2]	$ 38.48	$ 22.20	$ 1.65	$ 0.72	$ 38.48	$ 101.53	$ 29.33	$ 527.99	NA	$ 458.62	$ 337.04	$ 1,352.98
Kansas	$ 64.78	$ 40.78	$ 0.32	$ 14.24	$ 75.81	$ 195.93	$ 68.40	$ 136.65	$ 147.76	$ 165.86	$ 2.35	$ 521.02
Michigan	$ 34.66	$ 20.12	$ 0.36	$ 0.54	$ 34.66	$ 90.34	$ 109.42	$ 373.58	NA	$ 284.20	$ 285.48	$ 1,052.68
Missouri	$ 91.06	NA	$ 46.85	$ 29.02	$ 70.25	$ 237.18	$ 102.47	$ 174.43	$ 238.20	$ 260.39	$ 2.92	$ 778.41
Nevada	$ 16.48	$ 32.32	$ 1.84	NA	$ 85.70	$ 136.34	$ 125.94	$ 103.43	NA	$ 112.64	$ 2.74	$ 344.75
Ohio[3]	$ 66.45	$ 29.58	$ 1.64	$ 0.80	$ 66.45	$ 164.92	$ 30.61	$ 624.17	NA	$ 512.19	$ 410.32	$ 1,577.29
Oklahoma	$ 121.15	$ 78.09	$ 2.24	$ 17.80	$ 94.82	$ 314.10	$ 107.37	$ 147.19	$ 152.56	$ 214.36	$ 3.33	$ 624.81
Texas	$ 76.22	$ 38.15	$ 0.35	$ 15.02	$ 76.22	$ 205.96	$ 73.25	$ 174.43	$ 114.16	$ 73.25	$ 2.58	$ 437.67
Wisconsin[4]	$ 59.91	$ 36.98	$ 2.19	$ 1.04	$ 59.91	$ 160.03	$ 694.61	$ 543.46	NA	$ 516.53	$ 541.21	$ 2,295.81

Assumptions:
- Non-collocated
- 4-Wire Digital Loop connected by SBC to DS1 Unbundled Dedicated Interoffice Transport connected to DS1 Entrance Facility
- Urban Zone
- 1 mile circuit
- Includes applicable connection and disconnection non-recurring charges
- For display purposes, similar charges have been added together and grouped into the general categories listed on the chart.

Notes

1. In Illinois, the recurring rates for an EEL four-wire DS1 digital loop to DS1 dedicated transport combinations are assessed by charging the recurring rate for each UNE that comprises the EEL combination. The applicable recurring and nonrecurring rates for this EEL are tariffed in ILL. C.C. No. 20, Part 19 Section 20 (App. M, Tab 1). Tariff ILL. C.C. No. 20, Part 19 Section 20 references recurring rates found in ILL. C.C. No. 20, Part 19 Sections 2 and 12 (App. M, Tab 1). The applicable recurring rates are permanent rates established in the Second Interim Order, *Investigation Into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transports and Termination of Traffic*, ICC Docket Nos. 98-0486/0569 Consolidated (Feb. 17, 1998) (App. M, Tab 19). The Illinois Commerce Commission ("ICC") approved interim nonrecurring charges ("NRCs") for EEL combinations as the sum of the total nonrecurring rates for the UNEs that comprise the EEL combination. *See* Order on Reopening, *Illinois Commerce Commission On Its Own Motion, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost Studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues*, Docket No. 98-0396 (ICC Apr. 30, 2002) (App. M, Tab 76). The ICC made the rates subject to true-up in ICC Docket 01-0662. Order on Investigation, *Illinois Commerce Commission on its Own Motion, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. 01-0662, (ICC May 13, 2003) (App. C-IL, Tab 135).

2. The Indiana Utility Regulatory Commission ("IURC") has not required Indiana Bell to provide an EEL four-wire DS1 digital loop to DS1 dedicated transport combination. Accordingly, this combination is not currently included in Indiana Bell's tariff. If such a combination were to be required, the rates for each UNE that comprises the EEL combination would apply. The recurring and nonrecurring rate elements applicable to this EEL can be found in Indiana Bell's tariff IURC No. 20, Part 19 Section 22 (App. M, Tab 2). Tariff IURC No. 20, Part 19 Section 22 references recurring and nonrecurring rates found in IURC No. 20, Part 19 Sections 2 and 12 (App. M, Tab 2).

   Both the recurring and nonrecurring rates for this EEL are permanent in Indiana. The IURC set the recurring and nonrecurring rate for these elements based on a review of underlying costs in Cause No. 40611. *See* Order on UNE Tariff, *In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection, Service, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes*, IURC Cause No. 40611 (Jan. 18, 2001) (App. D-IN, Tab 8).

3. In Ohio, the recurring and nonrecurring rate elements for an EEL four-wire DS1 digital loop to DS1 dedicated transport combination can be found in the price list from AT&T's interconnection agreement, which is Attachment B to the Affidavit of Daniel R. McKenzie (App. A, Tab 32). See pages 1, 2, and 7 through 9 of Attachment B to Mr. McKenzie's Affidavit for the specific recurring and nonrecurring charges for each element.

   All recurring and nonrecurring rates for this EEL were examined and approved by the Public Utilities Commission of Ohio in Case 96-922-TP-UNC. *See* Finding and Order, *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, PUCO Case No. 96-922-TP-UNC (Nov. 24, 1998). These rates reflect the reduction that was implemented effective June 24, 2002 to reflect the conclusion of the ordered three year amortization period for non-volume sensitive costs.

4. In Wisconsin, the recurring and nonrecurring rate elements for an EEL four-wire DS1 digital loop to DS1 dedicated transport combination can be found in Wisconsin Bell's Tariff P.S.C. of W. Tariff 20, Part 19 Section 22 (App. M, Tab 4). Tariff P.S.C. of W. 20, Part 19 Section 22 references recurring and nonrecurring rates found in P.S.C. of W. 20, Part 19 Sections 2 and 12 (App. M, Tab 4). For a detailed description of the development of these recurring and nonrecurring rates, please see the Reply Affidavit of Scott T. VanderSanden (Reply App., Tab 12).